



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

United Keetoowah Band of Cherokee Indians

v.

**Director, Eastern Oklahoma Region,
Bureau of Indian Affairs.**

**Motion to Reconsider
and Withdraw**

**Decision
and
Briefing Schedule**

This matter arises from the United Keetoowah Band of Cherokee Indians' (UKB) application to have a 76-acre Community Services Parcel taken into trust. On June 24, 2009, I reversed and remanded the August 8, 2008, decision of the Regional Director, Eastern Region of Oklahoma denying UKB's application. The Regional Director had based her decision on perceived jurisdictional conflicts with the Cherokee Nation of Oklahoma (CNO), the Bureau of Indian Affairs' (BIA's) inability to administer the trust parcel, and the failure of the proposed fee-to-trust acquisition to qualify for a categorical exclusion under the National Environmental Policy Act (NEPA). In my June 24 2009 opinion, I declined to rule and explicitly reserved for additional consideration the question of my authority under Section 5 of the Indian Reorganization Act, as discussed below.

The UKB had previously appealed the August, 2008 Regional Director's decision to the Interior Board of Indian Appeals (IBIA). In September, 2008, the Deputy Assistant Secretary for Policy and Economic Development, acting under the authority delegated to him in the absence of an Assistant Secretary, took jurisdiction of the appeal from the IBIA pursuant to 25 C.F.R. § 2.20(c). The full procedural history is discussed in my June 24 decision.

In my June 24 decision, I remanded the matter to the Regional Director to apply the Department's checklist for a categorical exclusion under NEPA. I instructed the Regional Director that if she finds that the proposed fee-to-trust acquisition satisfies the checklist, she should hold the application "pending resolution of my authority to take the land into trust." In my June 24 decision, I left open the question of my authority to acquire the land in trust pending further consideration in the wake of the Supreme Court's decision in *Carcieri v. Salazar*, 2009 LEXIS 1633, 555 U.S. ____ (February 24, 2009).

On July 9, 2009, the Cherokee Nation of Oklahoma (CNO) filed a motion for reconsideration and withdrawal of the June 24 decision. This motion, in part, requested that I suspend implementation of the June 24 decision pending the reconsideration requested by CNO. On July 15, 2009, I provided the UKB with an opportunity to submit a brief no later than July 22, 2009, addressing the sole issue of suspension of my June 24th decision pending reconsideration. The UKB filed a timely brief in response.

Based on a careful review of the briefings, I hereby decline to suspend my June 24th decision, and accordingly, direct the Regional Director to proceed with application of the Department's checklist for a categorical exclusion under NEPA.

Suspension of my June 24 decision is not necessary because UKB's request to acquire land into trust was specifically not decided and was reserved for further consideration in light of the recent Supreme Court decision in *Carcieri v. Salazar*.

Further, I am hereby clarifying the effect of my June 24, 2009 decision: Specifically, my intent was not to render a finding on whether UKB was a successor-in-interest, but rather, was to state that the question as to whether UKB was a successor-in-interest raised a new issue that warranted additional analysis in light of *Carcieri v. Salazar*. I also wish to clarify that I did not intend to make any binding findings regarding the status of the historic Cherokee Tribe. As such, my June 24th decision was a partial ruling that did not make any finding of law or fact regarding my authority to take the land into trust on behalf of the UKB under any particular theory.

Accordingly, I hereby conclude that suspension and reconsideration of my June 24th decision is not necessary as it was not a final agency determination. To be clear, the June 24th order did not render a final ruling on the status of UKB as a successor-in-interest, nor did it render a final ruling on my authority to take the land into trust generally.

As such, I hereby request additional briefing from UKB and CNO on the issue of the import, if any, of the *Carcieri v. Salazar* decision. Said briefing should include a complete analysis of the successor-in-interest theory, as well as any other theories that UKB and/or CNO believe are pertinent to this discussion, whether or not raised in previous briefing. I also note that in *United Keetoowah Band v. United States*, No. 03-1433 L (Fed. Cl.), the parties filed an amended joint status report agreeing to stay those proceedings until December 7, 2009, in light of the proceedings in this case, and the court has entered an order amending the briefing schedule to that effect.

The briefing schedule in the instant case shall be as follows:

The UKB shall have until August 31, 2009, to file its opening brief.

The CNO and Regional Director shall have until September 21, 2009, to file a response, if any, to the UKB brief.

If response briefs are filed, the UKB shall have until October 2, 2009, in which to file a reply, if any.

Signed:

Date: JUL 30 2009

A handwritten signature in black ink, appearing to read "Larry Echo Hawk", written over a horizontal line.

Larry Echo Hawk
Assistant Secretary - Indian Affairs

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